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OFFICE OF PETITIONS

In re Patent No. 7,665,117	: DECISION GRANTING PETITION
Issue Date: February 16, 2010	: UNDER 37 CFR 1.78(a)(3) AND
Application No. 09/725,792	: REQUEST FOR CERTIFICATE OF
Filed: November 29, 2000	: CORRECTION
Attorney Docket No. 057866-134132	:

This is a decision on the petition, filed February 29, 2012, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 09/137,618, filed August 21, 1998, by way of a certificate of correction.

The petition is **dismissed**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed November 29, 2000. Therefore, since this application was filed on or after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. See, MPEP 1481.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The instant petition fails to satisfy requirement (1) set forth above. The reference as submitted on the draft certificate of correction incorrectly asserts that the instant application ('792) is a division of U.S. App. No. 09/137,618 filed August 21, 1998 which issued as Patent. No.

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6,222,530 on April 4, 2001. A review of the record reveals that App. No. 09/137,618 matured into U.S. Pat. No. 6,222,530 on April 24, 2001.

Any request for reconsideration must be accompanied by the proper reference.

Receipt is acknowledged of the required surcharge. As petitioners have not submitted the certificate of correction fee of \$100.00, the required certificate of correction fee will be charged to the authorized deposit account upon submission of a grantable petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

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